

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL DIVISION)**  
**MISC. APPLICATION NO. 379 OF 2017**  
**(ARISING FROM HCT-00-CC-CS-0307-2017)**

**NAKUMATT (U) LTD:.....:APPLICANT**

**VERSUS**

**MPORORO GROUP LTD & OTHERS:.....:RESPONDENTS**

**BEFORE: THE HON. JUSTICE DAVID WANGUTUSI**

**R U L I N G:**

On the 22<sup>nd</sup> September 2011 the Applicant called Nakumatt Uganda Ltd. entered into a sublease with the Respondents Bright Rwamirama and Florence Rwamirama the Respondent hereof.

The Applicant was to use the Property for business of a Supermarket at a cost of USD 9 per square metre.

It is alleged by the Respondent that the Applicant defaulted to pay rent amounting to USD 569,339.59. The Respondent sued the Applicant for recovery of the sum seeking

- a) Penalties for delayed payments of a loan at USD11,067.25.
- b) Outstanding Rental Arrears USD 257,544.
- c) Occupied space not paid for USD 10,530.
- d) Service charge USD 46,555
- e) An escalation charge of 3% per annum of 20,715 USD.
- f) Cheques bouncing penalties USD 100.

It is these claims that the Applicant seeks leave to defend.

Under Order 36 of the CPR, a Defendant only requires to establish a triable issue. Once a triable issue is established, court must grant leave to the Applicant.

In the suit the Respondents claimed for penalties that were levied against them because they failed to service a loan. They alleged that when they borrowed the money to make structural changes to the property, the Applicant was aware that the money would come from the rent to service it. That since the Applicant defaulted in rent payment, the Respondents were not in position to service the loan and therefore the resultant penalties should be paid by the Applicant.

For such a claim to stand, the Respondents have to prove in no uncertain terms that the Applicant undertook to make good any penalties that would arise should the Respondents fail to pay. It should have been a term of the agreement. This is important because there is nothing to suggest that the Respondents could not use the money on other things. The relationship between the Applicant and the Respondents vis a vis the penalties for default and in my view a triable issue that would entitle the Applicant to defend herself.

There is also the relationship the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and the 1<sup>st</sup> Respondent which are not unequivocally set out in the pleadings, that requires clarification, a thing that raises a triable issue.

In a summary suit a simple triable issue suffices to grant the Application sought.

A triable issue having been established by the Applicant, the Application is allowed. The Applicant should file a defence within 10 days hereof. Costs of the Application will abide the decision of the suit.

**Dated at Kampala this 25<sup>th</sup> day of August 2017.**

**Hon. Justice David Wangutusi**

**JUDGE**